United Nations A/HRC/31/NGO/16

General Assembly

Distr.: General
16 February 2016

English only

Human Rights Council
Thirty-first session
Agenda item 5
Human rights bodies and mechanisms

Written statement* submitted by the Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[02 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02216(E)

Please recycle

Rights of Children of Incarcerated Minority Parents

Friends World Committee for Consultation (Quakers) welcomes the increasing attention paid to the issues faced by minority groups in criminal justice systems, highlighted by the report of the Special Rapporteur on minority issues, Rita Izsak, on minorities and the criminal justice system.[1]

The report of the Special Rapporteur acknowledges a global pattern of violations of the rights of minority groups in criminal justice processes.[2] This echoes the UN Secretary-General's guidance note on racial discrimination and protection of minorities, which notes that systemic discriminatory practices against minority groups are frequently reported.[3]

FWCC (Quakers) recognise the importance of the eighth session of the Forum on Minority Issues in November 2015, on the topic of minorities in the criminal justice system, and the draft recommendations of the Forum in seeking to address these issues.[4]

FWCC (Quakers) would like to draw particular attention to the impact of this discriminatory treatment on the rights of the child, in particular those affected by parental incarceration. The children of members of minority groups are not only more likely to experience parental incarceration, but may be subject to additional adverse effects beyond those generally faced by the children of incarcerated parents.

Children of incarcerated parents and minorities in criminal justice systems

The report of the Special Rapporteur cites higher rates of criminalization of minority groups in many criminal justice systems, including their over-representation in pre-trial detention. Possible reasons for this include: the disproportionate representation of minority groups among poorer socio-economic groups where patterns of offending may be higher in respect of certain crimes; particular discriminatory provisions in criminal law; police profiling practices; and disproportionate targeting of minority communities leading to higher rates of arrest.[5]

The report also refers to disparities seen at the sentencing stage: members of minority groups are more likely to be given prison sentences rather than conditional releases; more likely to be sentenced to longer terms of imprisonment, or life imprisonment without parole; and are more likely to be sentenced to death. These disparities may be due to intentional prejudice and/or indirect discrimination against minority groups in judicial proceedings.[6]

Due to this increased criminalization across various stages of the criminal justice system, the children of members of minority groups face a greater likelihood of experiencing parental incarceration. However, without the proper recording of data on the children of incarcerated parents, disaggregated by minority grouping, States are unable to assess the extent of this impact, or to ensure the rights of these children are upheld and their well-being protected.

Impacts of parental incarceration

[1] Report of the Special Rapporteur on minority issues, Rita Izsak, to the seventieth session of the General Assembly on minorities and the criminal justice system, A/70/212 of 30 July 2015.
[2] Supra at note 1, para. 7.
[3] Guidance note of the Secretary-General on Racial Discrimination and Protection of Minorities, November 2014, available online at: http://www.ohchr.org/Documents/Issues/Minorities/GuidanceNoteSG.pdf.
[4] Forum on Minority Issues, Draft recommendations on minorities in the criminal justice system, A/HRC/FMI/2015/2 of 9 September 2015.
[5] Supra at note 1, para. 29.
[6] Supra at note 1, para. 53.

While the need for attention to be paid to the rights of children affected by parental incarceration has been directly acknowledged by many international human rights bodies and instruments,[7] criminal justice systems have often failed to recognise these children as individual rights holders.

Parental incarceration may impact directly upon each individual child in different ways. Among many recorded adverse effects, the incarceration of a parent, or parents, risks damaging parental and family relationships for affected children, potentially leading to emotional harm or relationship breakdown, and can negatively affect children's mental and physical health.[8]

Minorities in detention facilities

The report of the Special Rapporteur notes that while incarcerated, or in pre-trial detention, members of minority groups may experience further discriminatory treatment. This discrimination can take direct forms, where members of minority groups are subject to poorer conditions or treatment than other groups, or indirect forms, for example where authorities fail to adequately respect the particular needs of minority groups, such as in accommodating religious and cultural practices, providing language interpretation, or in the supporting the maintenance of relations with families.[9]

This additional discriminatory treatment, especially with regard to maintenance of relations with families, can further exacerbate negative impacts on the children of incarcerated parents. The ability to maintain a good parental relationship despite parental incarceration, where this is in the best interests of the child, has been found to help towards mitigating some of the negative emotional and psychological impacts for affected children.[10] For children of incarcerated parents not living in prison full-time, this relationship has to be maintained through intermittent in-person contact and indirect contact.

Children residing in prison with a parent

In many countries, children up to a certain age may reside in prison with a parent. In these instances, minority children residing in prison with a parent may be subject to discriminatory treatment due to their or their parents' minority group status.

Incarcerated members of minority groups and their children may also face restrictions in accessing specific services, such as mother and baby units and healthcare services, for example where these services are not made available in appropriate minority languages, or where facilities are not made culturally appropriate.

Judicial proceedings and sentencing

In order to uphold the rights and dignity of affected children, the best interests of the child should be taken into account as a primary consideration in all decision-making processes, including prosecutorial decision-making and at the time of sentencing.[11] Mandatory minimum sentences, which can be disproportionately applied to minority groups, prevent the consideration of the best interests of the child at the point of sentencing.[12]

---

[7] For references from relevant bodies see Quaker United Nations Office (2015) *Briefing Paper on International Standards and Guidance on Children of Incarcerated Parents*, available online at: http://quno.org/resource/2015/4/children-incarcerated-parents-international-standards-and-guidance.

[8] Jones, A, et al. (2013) *Children of Prisoners: Interventions and mitigations to strengthen mental health*, University of Huddersfield: Huddersfield, p47.

[9] Supra at note 1, para. 54.

[10] UN Committee on the Rights of the Child, Report and recommendations of the Day of General Discussion on 'Children of incarcerated parents' of 30 September 2011, para. 37, available online at: http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDReport.pdf.

[11] For references to the best interests of the child, see supra at note 7, p3-5.

[12] Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18 of 3 October 2015, pp.98-108, para. 35.

The report of the Special Rapporteur notes the importance of the appropriate recognition, respect and accommodation of individuals' cultural backgrounds throughout criminal proceedings.[13] Linguistic minorities,[14] foreign nationals and stateless persons[15] and their children may also experience particular difficulties and face additional risks in the course of judicial proceedings.

Arrest protocol

Minority groups often face disproportionate rates of arrest.[16] Where the impacts of arrest are not considered, the arrest of a parent, and particularly the violent arrest and/or arrest without explanation, tends to have a seriously adverse effect on the children.[17] In addition, the report of the Special Rapporteur recommends that police should be trained to understand the social context, cultural practices and values of minority communities.[18]

Alienation from the state

The report of the Special Rapporteur acknowledges that members of minority groups may view justice systems as 'alien' and to be avoided,[19] particularly where discrimination and oppression exists within such systems.[20] Negative experiences with criminal justice processes around parental incarceration may engender an even greater sense of alienation from the State, and so constitute a barrier to accessing justice in future.

The death penalty

The report of the Special Rapporteur cites findings that those sentenced to death come disproportionately from minority backgrounds.[21] This disparity in the imposition of the death penalty mean that the children of members of minority groups are more likely to experience the death sentence of execution of a parent.

The imposition of the death penalty has multiple negative impacts on the children of those sentenced to death or executed, which are often not taken into account at sentencing. Among other negative impacts, the execution of a parent permanently severs the parental relationship, and has been found to cause specific additional traumas for affected children.[22]

Recommendations

FWCC (Quakers) call on States to fully implement the final recommendations of the eighth session of the Forum on Minority Issues.

We also recommend that States implement the following measures in order to ensure the protection of the rights of the children of members of minority groups in criminal justice processes:

- States should ensure that data is collected by criminal justice agencies to record the number of prisoners with children and the number of children of each incarcerated parent. This should be disaggregated by minority grouping in order to allow for planning of policy and practice, including services for specific minority groups, if needed

[13] Supra at note 1, para. 37.
[14] Supra at note 1, para. 31.
[15] Supra at note 12, para. 4(b).
[16] Supra at note 1, para. 29.
[17] Phillips, S. D., and Zhao, J. (2010) 'The relationship between witnessing arrests and elevated symptoms of post-traumatic stress', *Children and Youth Services Review*, 32:10, pp. 1246-1254.
[18] Supra at note 1, para. 24.
[19] Supra at note 1, para. 66.
[20] Supra at note 1, para. 32.
[21] Supra at note 1, para. 53.
[22] Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, para. 309.81, referred to in Beck, E., Britto, S., and Andrews, A. (2007) *In the Shadow of Death: Restorative Justice and Death Row Families*, Oxford University Press: Oxford, p125; Long, W., (2011) 'Trauma therapy for death row families' in Journal of Trauma and Dissociation, 12, pp. 482-494.

- States should ensure that the best interests of the child are taken into account as a primary consideration in all prosecutorial and sentencing decisions regarding their parents, including through provision of legal assistance
- States should develop proactive measures to protect and promote the rights of children of minority groups with incarcerated parents, in order to address their specific needs, through consultation with affected minority communities[23]
- States should ensure that, where it is in the best interests of the child, children are able to maintain a relationship with their incarcerated parent or parents, including through ensuring rights to visiting and contact, and are not impeded in maintaining such relationships due to discrimination
- States should ensure that conditions of detention or imprisonment, and the relevant staff, should reasonably accommodate the cultural, dietary, religious and linguistic characteristics of minority prisoners[24]
- Pending abolition of the death penalty, States should ensure that the rights of children of parents sentenced to death are upheld, for example by ensuring that language is not a barrier to their access to information.

For further information on the above issues, please refer to our briefing paper, *Children of Incarcerated Parents: Minorities in Criminal Justice Systems.*[25]

---

[23] Supra at note 1, para. 56.
[24] Supra at note 4, para. 35; Supra at note 1, para. 100.
[25] Cullen, D. (2015) *Children of Incarcerated Parents: Minorities in Criminal Justice Systems,* available online at: http://quno.org/resource/2015/11/children-incarcerated-parents-and-minorities-criminal-justice-systems.